



C A L I F O R N I A   D E P A R T M E N T   O F

# Mental Health

1600 9th Street, Sacramento, CA 95814

(916) 654-2378

## **REQUEST FOR PROPOSAL (RFP) - Secondary Notice to Prospective Proposers**

MARCH 3, 2005

To: PROSPECTIVE PROPOSERS

You are invited to submit a proposal to the California Department of Mental Health for project number 05-75003-000 titled:

### **Provision of Consultation and Training Services to the Department of Mental Health Regarding Evaluation of Violent Sex Offenders**

**For Fiscal Years 2005-06, 2006-07 and 2007-08**

Note that all agreements entered into with the State of California will include by reference General Terms and Conditions and Contractor Certification Clauses that may be viewed and downloaded at Internet site:

<http://www.ols.dgs.ca.gov/Standard+Language/default.htm>. If you do not have Internet access, a hard copy may be obtained by contacting the persons listed below.

In the opinion of the Department of Mental Health, this RFP is complete and without need of explanation. However, if you have questions, or should you need any clarifying information, the contact person for this RFP is:

Moira Leyva, Contract Manager, (916) 653-1609 (for questions concerning the RFP requirements)

Melanie Khosroshahi, Contract Analyst, (916) 654-2487 (for questions concerning the contracting process)

Please note that no *verbal* information given will be binding upon the State unless such information is issued in writing as an official addendum to this RFP.

Sincerely,

Terrie Tatosian  
Deputy Director  
Administrative Services

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\*These documents are not required to be returned with the proposal package, but will be required upon award of the contract.

## **A) Purpose of this RFP**

The Department of Mental Health (DMH) Sex Offender Commitment Program (SOCP) is responsible for the evaluation of persons referred by California Department of Corrections (CDC) as potential sexually violent predators. The statute requires that the evaluation be in accordance with a standardized assessment protocol, developed and updated by DMH. The standardized assessment protocol shall require assessment of diagnosable mental disorders as well as various factors known to be associated with the risk of re-offense among sex offenders.

In order to meet the mandate to evaluate persons referred by the CDC, DMH maintains a panel of evaluators under independent contract for the provision of evaluation services. To achieve and maintain a high level of skill and expertise among the panel members, DMH is committed to the provision of training and consultation on an ongoing basis. DMH is seeking a Contractor to provide this training and consultation for a period of three years.

In addition, DMH is seeking a Contractor to assist DMH in its program monitoring by providing quality assurance and peer review of completed clinical reports.

## **B) Scope of Work**

Proposals must be submitted for the performance of all the services described herein. The Proposer who is awarded a contract agrees to provide all necessary labor, materials, tools and equipment to provide the services specified in this Scope of Work in the time and manner prescribed. The Proposer who is awarded a contract will take in full payment for the services provided the amount of money bid by the Proposer in Attachment 7, "Cost Proposal".

The Scope of Work is comprised of three sections: Consultation Services, Training Services, and Quality Assurance/Peer Review.

### **1. Consultation Services**

As approved by the Contract Manager, The Proposer who is awarded this contract will provide to DMH administrative program staff and Contract Evaluators (professionals under contract with DMH who provide evaluations of violent sex offenders; also referred to as "panel members") information and consultation regarding current trends in the field of sex offender evaluation. This will include, but not be limited to, ongoing review of current literature and creation and maintenance of an electronic research library. The Proposer who is awarded this contract will periodically (dates to be negotiated with the Contract Manager) provide to DMH a CDROM containing a copy of the contents of the research library.

The Proposer who is awarded this contract will provide case-specific consultation to Contract Evaluators on an as-needed basis relative to issues such as ethics, testimony issues, use of statistics, and recidivism risk assessment.

## **2. Training Services**

The panel of Contract Evaluators currently has approximately 40-45 members and is spread throughout the state with concentrations in the San Francisco Bay Area, the Central Coast Region and Southern California. Historically there has been limited turnover of Contract Evaluators, and while DMH does not anticipate adding any new members in the fiscal year 2005-2006, this is subject to change in the future years of the contract. Past training plans have included multiple regional meetings of small groups of Contract Evaluators, in addition to a single, multi-day training event with outside speakers.

The Proposer who is awarded this contract will develop an annual training plan to be approved by DMH, for the provision of training to a panel of Contract Evaluators. Topics to be included in the training plan will be determined in coordination with the Chief, SOCP, but will typically include new case law, testimony issues, prediction of future risk, and case presentations.

The Proposer who is awarded this contract will provide training to new SOCP panel members on an as-needed basis in accordance with a protocol developed by DMH.

## **3. Quality Assurance/Peer Review**

The Proposer who is awarded this contract will assist DMH in its program monitoring by providing Quality Assurance/Peer Review services in accordance with guidelines and parameters developed in coordination with DMH.

## **C) Contract Term**

The term of the contract resulting from this RFP will be from July 1, 2005 to June 30, 2008. The term of the contract may change if DMH makes an award earlier than expected or if DMH cannot execute the contract in a timely manner due to unforeseen delays.

DMH may modify the contract term and/or contract dollar amount during the term of the contract via a written amendment to the contract.

The contract resulting from this RFP shall be of no force or effect until it is signed by both parties and approved by the California Department of General Services (DGS). The Proposer awarded the contract is advised not to commence performance until a contract award has been made, all approvals have been obtained, and the awarded contract has been fully executed. Should performance commence before all approvals are obtained, services will be considered to have been volunteered.

## **D) Proposer Minimum Qualifications**

All Key Personnel ("Key Personnel" is defined as individuals, including subcontractors and consultants, who will have responsibility for the activities outlined in section B, "Scope of Work") must meet the following minimum qualifications:

1. A license to practice psychology in the state of California.
2. A Ph.D. in Psychology.
3. A minimum of five years experience in the field of evaluation, treatment and risk prediction of violent sex offenders.
4. Expert knowledge of various sex offender risk prediction tools, i.e. MnSOST, SORAG, and STATIC 99. (Expert knowledge may be demonstrated by letters of reference, publications list, training presentations/plans for other agencies, or by other means as appropriate.)
5. Subject matter expertise specific to California SVP statute and its implementation.
6. Demonstration of ability to comply with HIPAA requirements.

#### **E) Key Action Dates**

This schedule is contingent upon a number of factors including the availability of funds. Should any significant date be modified, Proposers will be notified by DMH via an addendum to this RFP to be posted on the California State Contracts Register (CSCR); accessible via the internet at <https://www.cscr.dgs.ca.gov/cscr/>.

EVENT	DATE
RFP available to prospective Proposers	3/03/2005
Written Questions/Inquiries due to DMH	3/17/2005
Date written responses, if any, to be sent to Proposers	3/24/05
Proposal Submission Deadline: Proposal due to DMH. Proposal must be received no later than 1:00 pm. Late Proposals will not be accepted for any reason.	4/07/2005
Notice of Intent to Award will be posted	4/14/2005
Final Date to File a Protest	4/22/2005
Award of Contract to Successful Proposer	4/25/2005
Proposed Contract Start Date	7/01/2005
Proposed Contract End Date	6/30/2008

## **F) Proposer Questions**

A Proposer should notify DMH immediately if he/she needs clarification about the services being sought or has questions about the RFP instructions or requirements. Inquiries shall be put in writing and transmitted to DMH. At its discretion, DMH reserves the right to contact an inquirer to seek clarification of any inquiry received. If a Proposer fails to report a known or suspected problem with this RFP, or fails to seek clarification and/or correction of the RFP, the Proposer submits a proposal at his/her own risk.

An inquiry submitted to DMH shall include the following:

1. The name of the organization submitting the question.
2. The name of a contact person along with a mailing address, telephone number and e-mail address.
3. A detailed description of the subject or issue in question or discrepancy found.
4. RFP section, page number or other information useful in identifying the specific problem or issue in question.
5. The remedy sought, if applicable.

Written inquiries about this RFP must be received by DMH no later than March 17, 2005.

Questions/inquiries shall be submitted through U.S. mail, by facsimile or hand-delivered to:

Maira Leyva  
Department of Mental Health  
Bateson Building  
1600 9<sup>th</sup> Street, Room 250  
Sacramento, CA 95814  
Phone: (916) 653-1609  
Fax: (916) 653-2257

A Proposer transmitting a question by facsimile is responsible for confirming the receipt of the faxed questions by the stated deadline. DMH internal processing of U.S. mail may add up to 24 hours to the delivery time. If questions are mailed, the Proposer should consider using certified, registered or express mail. Request a return receipt confirming delivery date and time of delivery. If a question is hand-delivered, allow sufficient time to locate parking and allow for sign-in at the Bateson Building security desk.

Any questions which, in the judgment of the Contracts Office materially alter the RFP requirements, will be answered in writing by the date noted in section E, "Key Action Dates". The questions and answers will be posted on the DMH website at <http://www.dmh.ca.gov/> under the section title "What's New". The questions and answers will also be sent to all parties who downloaded a proposal package from the CSCR and entered a mailing address or email address. The questions and answers will be sent via email if an email address is provided, or to a mailing address if an email address is not provided.

Please note that spontaneous verbal remarks provided in response to verbal inquiries are unofficial and are not binding on DMH unless later confirmed in writing. Further, no inference shall be drawn from any question DMH does not respond to in writing.

## **G) RFP Response Requirements**

Proposals shall provide straightforward and concise descriptions of the Proposer's plan to satisfy the requirements of this RFP. The proposal shall be complete and accurate. Omissions, inaccuracies or misstatements may be sufficient cause for rejection of a proposal. DMH will determine the responsiveness of a proposal by its quality, not its volume, packaging or colored displays.

### **1. Work Plan Requirements**

The Work Plan is written by the Proposer, describing for DMH how he/she will accomplish the job DMH needs done as outlined in the Scope of Work in section B. of this RFP. Proposers are relied on to recommend methods and/or approaches that will meet the needs outlined by DMH in the Scope of Work.

The Work Plan shall include:

- A) Overview: an overall description of the techniques, approaches and methods to be used in performing the services.
- B) Agency Capabilities, Knowledge and Experience: Proposer shall describe his/her general background and expertise with an emphasis on the details of work experience that qualify the Proposer to undertake this project. Emphasis should be given to experience based on work within the last five (5) years. Proposer shall give particular emphasis to the areas of expertise itemized in the Minimum Qualifications, section D. of this RFP.
- C) Project Narrative: Proposer shall address each of the numbered activities in the Scope of Work for each year of the contract. The information provided for each activity for each year shall include the following three (3) items:
  - 1) A description of the major tasks/actions necessary for completion of each of the activities.
  - 2) A projected timeline for each activity including specific milestones by which progress can be measured.
  - 3) Identification of Key Personnel and what qualifies this/these individual(s) to oversee this aspect of the project.
- D) Equipment, Facilities and Resources: Proposer shall describe facilities, equipment, teleconferencing or telecommunications capabilities, computer hardware and software, and any other resources that relate to the Proposer's ability to successfully complete the Scope of Work.
- E) Management Plan: Proposer shall describe how and by whom Proposer's staff, subcontractors, consultants and activities will be coordinated, managed and monitored.

F) Subcontractors: If subcontractors are contemplated, Proposer shall identify those persons or firms, the anticipated portions and monetary percentages of the work to be done by the subcontractors, how they will be selected and why, resumes of each major subcontract participant, and a description of how the subcontracted work will be controlled, monitored and evaluated.

## **2. Cost Proposal Requirements**

The Cost Proposal must take into consideration and must reflect the required Scope of Work and the Work Plan prepared in response to section G.1. of this RFP. Using the Annual Cost Tables in RFP Attachment 7, Proposer shall prepare detailed cost displays for each of the three contract years. These annual cost figures shall cover all of the Scope of Work activities to be performed in each of the contract years. The total amount of the Cost Proposal shall not exceed seventy-four thousand dollars (\$74,000.00) for each year of the contract. Any proposal exceeding this amount will be rejected.

The budget detail breakdown in the Annual Cost Tables must contain the following:

- A) Consultation Services:  
Show separate line items for costs associated with 1) the research library, and 2) case consultation.
- B) Training Services
- C) Quality Assurance/Peer Review
- D) Travel Expenses:  
The Proposer who is awarded a contract shall be reimbursed for travel expenses and per diem set at the same rate specified by the Department of Personnel Administration (DPA) for represented employees in Unit 16, beginning from point of origin to assigned destination. The Proposer who is awarded a contract will not be reimbursed for travel time. The current DPA guidelines can be found on the Internet at <http://www.dpa.ca.gov/jobinfo/statetravel.shtm>.

Using the Summary Cost Table in RFP Attachment 7, Proposer must also provide a Cost Proposal summary which covers the entire term of the contract. The Summary Cost Table identifies the all-inclusive cost of the project. The total amount of the Cost Proposal shall not exceed two hundred and twenty-two thousand dollars (\$222,000.00) for the entire term of the contract. Any proposal exceeding this amount will be rejected.

## **3. Required Attachments Checklist**

The following specifies the organization and content of each proposal. A responsive proposal will contain the following completed attachments:

Attachment 1: Required Attachment Check List

Attachment 2: Proposal/Proposer Certification Sheet

Attachment 3: Proposal Cover Page

Attachment 4: Statement of Qualifications for Key Personnel

Attachment 5: Resume(s) for Key Personnel

Attachment 6: Work Plan

Attachment 7: Cost Proposal

Attachment 8: References for Key Personnel

Attachment 9: Copy of License and Proof of Degree for Key Personnel

Attachment 10: Small Business Preference Form

#### **H) Submission of Proposal/Format Requirements**

1. The proposal shall be typewritten on white bond paper using 12-point font to the extent possible. Margins shall be at least one-half inch on all four sides. Paper size shall be standard letter, 8 ½ by 11 inches, and pages should be single-side copied. Bind each proposal set in a way that enables easy page removal. Loose leaf or three-ring binders are acceptable.
2. No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent to the error. The person signing the proposal shall initial the corrections in ink.
3. All proposals shall include the documents identified in Section G.3., "Required Attachments Checklist". Proposals not including the proper "required attachments" shall be deemed non-responsive. A non-responsive proposal is one that does not meet the basic proposal requirements and may be rejected.
4. Before submitting a response to this RFP, Proposers should review, correct all errors and confirm compliance with the RFP requirements.
5. DMH does not accept alternate contract language from a prospective contractor. A proposal with such language will be considered a counter proposal and will be rejected. The State's General Terms and Conditions (see Addendum 2) are not negotiable.
6. A proposal may be rejected if it is conditional or incomplete, or if it contains any alterations of form or other irregularities of any kind. DMH may reject any or all

proposals and may waive an immaterial deviation in a proposal. DMH's waiver of an immaterial deviation shall in no way modify the RFP document or excuse the Proposer from full compliance with all requirements if awarded the agreement.

7. An individual who is authorized to bind the proposing firm contractually shall sign the Attachment 2, Proposal/Proposer Certification Sheet. The signature must indicate the title or position that the individual holds in the firm. An unsigned proposal may be rejected.
8. All proposals must be submitted under sealed cover and sent to DMH by the date and time shown in section E. of this RFP. Proposals received after this date and time will not be considered.
9. A minimum of two (2) paper copies of the proposal must be submitted to DMH in addition to the original proposal.
10. The original proposal must be marked "ORIGINAL COPY". All documents contained in the original proposal package must have original signatures and must be signed by a person who is authorized to bind the proposing firm. All additional proposal sets may contain photocopies of the original package.
11. One additional copy of the proposal on CD-ROM must be submitted to DMH.
12. Proposals shall be mailed or delivered to the following address (same address for U.S. Postal Service deliveries and for Hand deliveries including UPS, Express Mail, Federal Express, etc.) :

Department of Mental Health  
1600 9<sup>th</sup> Street, Room 150  
Sacramento, California 95814  
Attention: Melanie Khosroshahi, Contracts Unit
13. A Proposer may modify a proposal after its submission by withdrawing the original proposal and resubmitting a new proposal prior to the proposal submission deadline as set forth in section E., "Key Action Dates". Proposal modifications offered in any other manner, oral or written, will not be considered.
14. A Proposer may withdraw its proposal, without cause, before the proposal submission deadline by submitting a written withdrawal request to DMH. The withdrawal request must be signed by the Proposer or an authorized agent in accordance with item 7. above. A Proposer may thereafter submit a new proposal prior to the proposal submission deadline.

After the proposal submission deadline, proposals may not be withdrawn.

15. DMH may modify the RFP prior to the date fixed for submission of proposals by the issuance of an addendum which will be posted on the CSCR. The addendum will also be sent to all parties who downloaded a proposal package from the CSCR and entered a mailing address or email address. The questions and answers will be sent via email if an email address is provided, or to a mailing address if an email address is not provided.

16. DMH reserves the right to reject all proposals. DMH is not required to award an agreement.
17. More than one proposal from an individual, firm, partnership, corporation or association under the same or different names, will not be considered.
18. No oral understanding or agreement shall be binding on either party.

#### **I) Preference Program**

Small Business Preference: Bidders that are certified as small business in California are encouraged to apply. A certified small business may claim a 5% cost preference when submitting a proposal on a state contract. The preference is used only for computation purposes to determine the winning Proposer and does not alter the amounts of the resulting contract. A certified small business will have its points increased by 5% of the total points awarded to the highest scored, non-small business Proposer. An explanation of small business certification and information on how to become certified as a small business and related information can be found on the Internet at <http://www.pd.dgs.ca.gov>. For the purposes of this RFP, all Proposers must submit a completed form number MH 1157, "Small Business Form" (Attachment 10).

To be considered a valid small business in an applicable state contract bid competition, a complete certification application package must be received by the Office of Small Business and DVBE Certification (OSDC) no later than 5 p.m. on the proposal submission deadline date. The certification will be effective on the date the application is properly received and deemed complete by the OSDC. Incomplete application submittals will delay certification status and may result in the loss of the 5 percent preference eligibility. Applications are processed on a "first-in", "first-out" basis unless an expedite is requested. Expedite requests will be considered by the OSDC as follows: Proposer must be actively bidding on an upcoming State of California solicitation. The law allows certification applicants until 5 pm on the proposal submission deadline date to properly submit a complete certification application and all required support documents to the OSDC. However, the OSDC prefers to receive the written expedite request and complete certification application package a minimum of 5 working days prior to the proposal submission deadline date. Further information can be found on the Internet at <http://www.pd.dgs.ca.gov/smbus/expedite.htm>.

#### **J) Evaluation Process**

A multiple stage evaluation process will be used to review and/or score proposals. DMH will reject any proposal that is found to be non-responsive at any stage of evaluation.

##### **Stage 1- Required Attachment Checklist and Minimum Qualifications Review**

- 1) Shortly after the proposal submission deadline, DMH will review all eligible proposals (i.e., those proposals that are received in the time and manner prescribed in the RFP) to determine which proposals meet the format requirements specified in section H of the RFP.

- 2) In addition, DMH shall evaluate the proposals to determine if the Proposer meets the Minimum Qualifications required in the RFP as referenced in section D.
- 3) Those proposals that appear to meet the format requirements and minimum qualifications requirements will pass the Stage 1 review and will be submitted to an Evaluation Panel for further consideration.

Those proposals that do not meet the format and minimum qualifications requirements will be deemed non-responsive and may be rejected from further consideration.

### **Stage 2- Technical Proposal Scoring**

- 1) With the exception of the price in the Cost Proposal in Stage 3, the Evaluation Panel will individually and/or as a team review, evaluate and numerically score the technical components of the proposal (hereafter referred to as the "Technical Proposal") on the basis of completeness, responsiveness, clarity of presentation, and adequacy of the degree to which it complies with the RFP requirements.
- 2) In assigning points for individual evaluation components, evaluators may consider issues including, but not limited to, the extent to which a proposal:
  - Is lacking information, lacking depth or breadth, or lacking significant facts and/or details, and/or;
  - Is fully developed, comprehensive and has few, if any, weaknesses, defects or deficiencies, and;
  - Demonstrates that the Proposer understands DMH's needs, the services sought, and/or the contractor's responsibilities, and;
  - Illustrates the Proposer's capability to perform all services and meet all Scope of Work requirements, and;
  - Contributes to the achievement of DMH's goals and objectives if implemented, and;
  - Demonstrates the Proposer's capacity, capability and/or commitment to exceed regular service needs (i.e., enhanced features, approaches, or methods, creative or innovative business solutions, etc.).
- 3) Below are the point values for each Technical Proposal evaluation component that will be scored. A overall maximum of 70 possible points may be achieved in this stage and an overall minimum of 30 points must be achieved to be considered a responsive proposal. In addition, to be considered a responsive proposal, minimum points must be achieved for each Technical Proposal component as also reflected in the chart below. (A responsive proposal is one which meets or exceeds the requirements stated in this RFP.)

### Technical Proposal Scoring

Technical Proposal Component	Point Value of Component	Minimum Point Value (must be achieved to pass Stage 2)
Knowledge, Capabilities and Experience	15	7
Understanding of CA SVP statute WIC 6600 et seq	15	5
Project Personnel	15	5
Work Plan and Time Schedule Requirements	15	8
Cost Effectiveness	10	5
TOTAL Technical Proposal	70	30

The Evaluation Panel will use the following criteria to score each of the technical proposal components:

a) Knowledge, Capabilities and Experience

Knowledge, Capabilities and Experience	Points Possible	Points Earned
From the general background, expertise and experience described in the proposal, to what extent has the Proposer shown the ability to undertake and successfully complete the activities related to the following areas:		
1. Consultation Services	5	
2. Training Services	5	
3. Quality Assurance/Peer Review	5	
TOTAL	15	

b) Understanding of CA SVP statute WIC 6600 et seq

Understanding of CA SVP statute WIC 6600 et seq	Points Possible	Points Earned
From the knowledge and work experience described, to what extent has the Proposer shown his or her ability to work effectively and knowledgeably in the area of sex offender evaluation and risk prediction.	15	
TOTAL	15	

c) Project Personnel

Project Personnel	Points Possible	Points Earned
To what extent has the Proposer provided a title and job description for each of the Key Personnel including subcontractors and consultants?	2.5	
To what extent do the descriptions of the education, expertise, capabilities and credentials of Key Personnel, including subcontractors and consultants, demonstrate the Proposer's understanding of the expertise necessary to effectively complete the Scope of Work?	10	
Was a Statement of Qualifications and a resume provided for all Key Personnel?	2.5	
<b>TOTAL</b>	<b>15</b>	

d) Proposer's Work Plan and Time Schedule Requirements

Proposer's Work Plan and Time Schedule Requirements	Points Possible	Points Earned
To what extent does the Proposer's explanation of its overall approaches or methods for accomplishing the Scope of Work seem logical, reasonable and capable of successful implementation?	2	
To what extent does the project narrative demonstrate Proposer's ability to complete each activity for each fiscal year by providing a description of necessary action steps, timelines and individuals who will have primary responsibility for each activity?	8	
To what extent has the Proposer demonstrated the capability to effectively coordinate, manage and monitor the efforts of assigned staff, including subcontractors and consultants if applicable, to ensure that work is effectively completed and timely?	3	
To what extent has the Proposer demonstrated that the applicable accounting processes, facilities, equipment, telecommunication, computer equipment and related resources described by the Proposer will ensure successful performance?	2	
<b>TOTAL</b>	<b>15</b>	

e) Cost Effectiveness

Cost Effectiveness	Points Possible	Points Earned
Based on all of the information provided in the Technical Proposal, to what extent does the cost proposal appear to be cost-effective? (Cost effectiveness is defined as producing good results for the amount of money spent.)	10	
TOTAL	10	

**Stage 3- Evaluation of Cost Proposal**

- 1) After the Technical Proposal scoring is complete, responsive proposals will be evaluated on the basis of cost. A maximum of 30 points may be awarded for the cost proposal.
- 2) The proposal offering the lowest total cost earns the maximum of 30 points. The remaining proposals earn cost proposal points through a cost conversion formula shown below. Final calculations shall result in numbers rounded to two decimal places.

$$\text{Lowest Cost Proposal} \div \text{Another Cost Proposal} \times 30 = \text{Cost Points Earned}$$

- 3) Example for Illustration Purposes:

Lowest cost earns 30 points.

$$\begin{aligned} &\$100,000 \text{ (lowest cost proposal)} \div \$125,000 \text{ (another cost proposal)} = .80 \\ &.80 \times 30 \text{ points} = 24 \text{ points (total cost proposal points of another Proposer)} \end{aligned}$$

**Stage 4- Combining Technical Proposal and Cost Proposal Scores**

DMH will combine the technical proposal points of Proposers that achieve a passing score on the technical proposal to the cost proposal points earned and will tentatively identify the Proposer with the highest combined score.

**Stage 5- Adjustments to Score Calculations for Bidding Preferences**

- 1) DMH will determine and confirm which entities, if any, are eligible to receive a bidding preference (i.e., small business).
- 2) To confirm the identity of the highest scored responsible Proposer, DMH will calculate the preference points for applicable claimed preference(s) and will readjust the total score of those Proposers eligible for bidding preferences. DMH will apply preference adjustments to eligible Proposers according to State regulations following verification of eligibility with the appropriate office of the Department of General

Services. More information about the allowable bidding preferences appears in RFP section I, "Preference Program."

#### **K) Award and Protest**

1. An award, if made, will be made to the highest scoring proposal. If two or more proposals have the same highest total score, the tie will be broken as follows:

For each of the "tied" proposals, the points earned in section a), "Knowledge , Capabilities and Experience" will be added to the points earned in section d), "Proposer's Work Plan and Time Schedule Requirements". The Proposal with the highest sum of points will be awarded the contract.

If the tie-breaking exercise described above results in yet another tie, the second tie will be broken by a coin toss administered by the Contract Manager and the Evaluation Panel.

2. Prior to awarding the contract, DMH will post a Notice of Intent to Award in Room 101 of the Department of Mental Health, 1600 9<sup>th</sup> Street, Sacramento, CA and on the DMH's website at: [www.dmh.ca.gov](http://www.dmh.ca.gov) for a period of five (5) working days. All proposals and all scoring sheets shall be available for public inspection following the posting of the Notice of Intent to Award (PCC 10345).
3. If any bidder, prior to the award of agreement, files a written protest with the Department of General Services, Office of Legal Services, 707 Third Street, 7th Floor, Suite 7-330, West Sacramento, CA 95605 and the Department of Mental Health, Contracts Office, 1600 9<sup>th</sup> Street, Room 150, Sacramento, California 95814 on the grounds that the (protesting) Proposer is the lowest responsive responsible bidder, the agreement shall not be awarded until either the protest has been withdrawn or the Department of General Services has decided the matter. It is suggested that the Proposer submit any protest by certified or registered mail.
4. Within five (5) days after filing the initial protest, the protesting Proposer shall file with the Department of General Services and the awarding agency a detailed written statement specifying the grounds for the protest. The written protest must be sent to the Department of General Services, Office of Legal Services, 707 Third Street, 7<sup>th</sup> Floor, Suite 7-330, West Sacramento, California 95605. A copy of the detailed written statement must be mailed to DMH, Contracts Unit, 1600 9<sup>th</sup> Street, Room 150, Sacramento, CA 95814. It is suggested that the Proposer submit any protest by certified or registered mail.
5. Upon resolution of the protest and award of the agreement, Contractor must complete and submit to the awarding agency the Payee Data Record (STD 204), to determine if the Contractor is subject to state income tax withholding pursuant to California Revenue and Taxation Code Sections 18662 and 26131. This form can be found on the Internet at <http://www.documents.dgs.ca.gov/osp/pdf/std204.pdf>. No payment shall be made unless a completed STD 204 has been returned to the awarding agency.

6. Upon resolution of the protest and award of the agreement, Contractor must sign and submit to the awarding agency the Contractor Certification Clauses (CCC), which can be found on the Internet at [www.dgs.ca.gov/contracts](http://www.dgs.ca.gov/contracts).

#### **L) Disposition of Proposals**

Upon proposal opening, all documents submitted in response to this RFP will become the property of the State of California, and will be regarded as public records under the California Public Records Act (Government Code Section 6250 et seq.) and subject to review by the public. It is the policy of DMH's Contract Unit to retain contract documents for a minimum of three years from the termination date of the contract, or three years after the final payment is made to the Contractor under the terms of the contract, whichever is longer.

#### **M) Agreement Execution and Performance**

Performance shall start on the date set by DMH and the Contractor, after all approvals have been obtained and the agreement is fully executed. Should the Contractor fail to commence work at the agreed upon time, DMH, upon five (5) days written notice to the Contractor, reserves the right to terminate the agreement. In addition, the Contractor shall be liable to the State for the difference between Contractor's Proposal price and the actual cost of performing work by another Contractor.

All performance under the agreement shall be completed on or before the termination date of the agreement.

#### **N) Sample Standard Agreement (STD 213)**

Attached is a sample Standard Agreement, a version of which will be signed by the Proposer who is awarded a contract. Proposer is advised to read and understand the provisions in the sample Standard Agreement (Addendum 1) as well as the related document in Addendum 2. The Proposer who is awarded a contract will be required to sign a Standard Agreement and related documents.

## ATTACHMENT 1

### Required Attachment Checklist

A complete proposal or proposal package will consist of the items identified below. Complete this checklist to confirm the items in your proposal. Place a check mark or "X" next to each item that you are submitting to DMH. For your proposal to be responsive, all required attachments must be returned. This checklist must be returned with your proposal package.

<u>Attachment</u>	<u>Attachment Name/Description</u>
_____ Attachment 1	Required Attachment Check List
_____ Attachment 2	Proposal/Proposer Certification Sheet
_____ Attachment 3	Proposal Cover Page
_____ Attachment 4	Statement of Qualifications for Key Personnel
_____ Attachment 5	Resumes for Key Personnel
_____ Attachment 6	Work Plan
_____ Attachment 7	Cost Proposal
_____ Attachment 8	References for Key Personnel
_____ Attachment 9	Copy of License and Proof of Degree for Key Personnel
_____ Attachment 10	Small Business Form

ATTACHMENT 2

Proposal/Proposer Certification Sheet

This Proposal/Proposer Certification Sheet must be signed with original signatures and returned along with all the "required attachments" as an entire package. The proposal must be transmitted in a sealed envelope in accordance with RFP instructions.

- A. Place all required attachments behind this certification sheet.
- B. The signature affixed hereon and dated certifies compliance with all the requirements of this proposal document. The signature below authorizes the verification of this certification.

**An Unsigned Proposal/Proposer Certification Sheet  
May Be Cause For Rejection**

1. Company Name	2. Telephone Number (   )	2a. Fax Number (   )
3. Address		
Indicate your organization type:		
4. <input type="checkbox"/> Sole Proprietorship	5. <input type="checkbox"/> Partnership	6. <input type="checkbox"/> Corporation
Indicate the applicable employee and/or corporation number:		
7. Federal Employee ID No. (FEIN)	8. California Corporation No.	
9. Indicate applicable license and/or certification information:		
10. Proposer's Name (Print)	11. Title	
12. <b>Signature</b>	13. Date	
14. Are you certified with the Department of General Services, Office of Small Business Certification and Resources (OSBCR) as:		
a. California Small Business Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter certification number: _____		
b. Disabled Veteran Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter your service code below: _____		
<b>NOTE:</b> A copy of your Certification is required to be included if either of the above items is checked "Yes".		
Date application was submitted to OSBCR, if an application is pending:		

Completion Instructions for Proposal/Proposer Certification Sheet

Complete the numbered items on the Proposal/Proposer Certification Sheet by following the instructions below.

Item Numbers	Instructions
1, 2, 2a, 3	Must be completed. These items are self-explanatory.
4	Check if your firm is a sole proprietorship. A sole proprietorship is a form of business in which one person owns all the assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.
5	Check if your firm is a partnership. A partnership is a voluntary agreement between two or more competent persons to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. An association of two or more persons to carry on, as co-owners, a business for profit.
6	Check if your firm is a corporation. A corporation is an artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals.
7	Enter your federal employee tax identification number.
8	Enter your corporation number assigned by the California Secretary of State's Office. This information is used for checking if a corporation is in good standing and qualified to conduct business in California.
9	Complete, if applicable, by indicating the type of license and/or certification that your firm possesses and that is required for the type of services being procured.
10, 11, 12, 13	Must be completed. These items are self-explanatory.
14	If certified as a California Small Business, place a check in the "yes" box, and enter your certification number on the line. If certified as a Disabled Veterans Business Enterprise, place a check in the "Yes" box and enter your service code on the line. If you are not certified to one or both, place a check in the "No" box. If your certification is pending, enter the date your application was submitted to OSBCR.

### ATTACHMENT 3

#### Proposal Cover Page

The Proposer shall submit a signed cover page. Only the person authorized to bind the Proposer to the awarded agreement shall sign the cover page. The cover page shall also include the following:

1. Name of the proposing firm;
2. The physical mailing address, telephone and fax numbers of the proposing firm;
3. Name of the person to obligate the firm in matters regarding this proposal or the resulting contract, and corresponding telephone and fax numbers and email address;  
and
4. Name of the person authorized to act as the contact person for the firm, and corresponding telephone and fax numbers, and email address.

#### ATTACHMENT 4

##### Statement of Qualifications for Key Personnel

Explain why you believe you are qualified to perform the work described in this RFP. Please include a separate statement for each of the identified Key Personnel.

This section shall provide adequate detail and documentation for DMH to determine if the Proposer meets the Minimum Qualifications required per section D of this RFP. If, based on the information and documentation provided, DMH is not able to determine whether the Proposer meets the Minimum Qualifications, the proposal will be considered to be not responsive and will not be forwarded for further scoring and evaluation.

## ATTACHMENT 5

### Resume(s) for Key Personnel

Please attach your resume, specifically detailing your education and experience in relation to the needs of the program under this RFP. Please include a resume for each of the identified Key Personnel.

## ATTACHMENT 6

### Work Plan

See Section G.1. of the RFP for details on the Work Plan requirements.

ATTACHMENT 7

Cost Proposal

Annual Cost Tables (3, following this page)  
Summary Cost Table (1, following this page)

ANNUAL COST TABLE  
For Activities Specified in the Scope of Work  
Contract Year One: July 1, 2005 - June 30, 2006

Scope of Work Activity Number	Deliverables	Cost
1	Research Library	\$
1	Case Consultation	\$
	TOTAL CONSULTATION SERVICES:	\$
2	TOTAL TRAINING SERVICES:	\$
3	TOTAL QUALITY ASSURANCE/PEER REVIEW:	\$
	TOTAL TRAVEL EXPENSES:	\$
TOTAL COST FOR YEAR ONE:		\$

ANNUAL COST TABLE  
For Activities Specified in the Scope of Work  
Contract Year Two: July 1, 2006 - June 30, 2007

Scope of Work Activity Number	Deliverables	Cost
1	Research Library	\$
1	Case Consultation	\$
	TOTAL CONSULTATION SERVICES:	\$
2	TOTAL TRAINING SERVICES:	\$
3	TOTAL QUALITY ASSURANCE/PEER REVIEW:	\$
	TOTAL TRAVEL EXPENSES:	\$
TOTAL COST FOR YEAR TWO:		\$

**ANNUAL COST TABLE**  
For Activities Specified in the Scope of Work

Contract Year Three: July 1, 2007 - June 30, 2008

<b>Scope of Work Activity Number</b>	<b>Deliverables</b>	<b>Cost</b>
1	Research Library	\$
1	Case Consultation	\$
	TOTAL CONSULTATION SERVICES:	\$
2	TOTAL TRAINING SERVICES:	\$
3	TOTAL QUALITY ASSURANCE/PEER REVIEW:	\$
	TOTAL TRAVEL EXPENSES:	\$
<b>TOTAL COST FOR YEAR THREE:</b>		<b>\$</b>

**SUMMARY COST TABLE**  
For Activities Specified in the Scope of Work

Contract Years: July 1, 2005 - June 30, 2008

TOTAL COST – CONTRACT YEAR ONE (July 1, 2005 – June 30, 2006):	\$
TOTAL COST – CONTRACT YEAR TWO (July 1, 2006 – June 30, 2007):	\$
TOTAL COST – CONTRACT YEAR THREE (July 1, 2007 – June 30, 2008):	\$
<b>TOTAL PROPOSED COST FOR THREE YEARS:</b>	<b>\$</b>

ATTACHMENT 8

References for Key Personnel

Submission of this attachment for each identified Key Personnel is mandatory. Failure to complete and return this attachment with your proposal will cause your proposal to be rejected and deemed non-responsive.

List below at least one reference for services performed within the last five years, which are similar to the Scope of Work to be performed in this contract. If one reference cannot be provided, please explain why on an attached sheet of paper.

REFERENCE 1			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person	Telephone Number		
Dates of Service	Value or Cost of Service		
Brief Description of Service Provided			

REFERENCE 2			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person	Telephone Number		
Dates of Service	Value or Cost of Service		
Brief Description of Service Provided			

REFERENCE 3			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person	Telephone Number		
Dates of Service	Value or Cost of Service		
Brief Description of Service Provided			

## ATTACHMENT 9

### Copy of License and Proof of Degree for Key Personnel

Submission of the following for each identified Key Personnel is mandatory:

1. A license to practice Psychology in the state of California.
2. Proof of Ph.D. in Psychology.

ATTACHMENT 10

Small Business Form

**NOTICE TO ALL BIDDERS**

**Small Business Preference**

Section 14835, et. seq. Of the California Government Code requires that a five percent (5%) preference be given to bidders who qualify as a small business. The rules and regulations of this law, including the definition of a small business for the delivery of services, are contained in Title 2, California Administrative Code, Section 1896, et. seq. A copy of the regulations is available on request. To claim the Small Business Preference, which may not exceed \$50,000 for any bid, your firm must have its principal place of business located in California and be verified by the State Office of Small Business Certification and Resources. Questions regarding the preference approval should be directed to that office at (916) 322-5060 or (916) 323-5478.

**Please complete this form and return with your Bid.**

Are you claiming preference as a small business?

( ) YES      ( ) NO

Small Business Number \_\_\_\_\_

\_\_\_\_\_  
Name of CONTRACTOR/Organization

\_\_\_\_\_  
Street Address, City, State, Zip Code

\_\_\_\_\_  
Today's Date

ADDENDUM 1: Sample Standard Agreement (STD 213)

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
STD 213 (Rev 06/03)

AGREEMENT NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

CONTRACTOR'S NAME

2. The term of this Agreement is: through

3. The maximum amount \$  
Of this Agreement is:

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work page(s)

Exhibit B – Budget Detail and Payment Provisions page(s)

Exhibit C\* – General Terms and Conditions

Check mark one item below as Exhibit D:

☐  
☐

Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement)

page(s)

Exhibit - D\* Special Terms and Conditions

Exhibit E – Additional Provisions

page(s)

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

**CONTRACTOR**

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

**STATE OF CALIFORNIA**

AGENCY NAME

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

California Department of General  
Services Use Only

☐ Exempt per:

EXHIBIT A

**SCOPE OF WORK**

(PROGRAM NARRATIVE GOES HERE)

The project representatives during the term of this agreement will be:

State Agency:	Department of Mental Health
Name:	
Title:	Contract Manager
Phone:	
Fax:	
Email:	

  

Contractor:	
Name:	
Title:	
Phone:	
Email:	

## EXHIBIT B

### **BUDGET DETAIL AND PAYMENT PROVISIONS**

#### **1. Invoicing and Payment**

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. Invoice(s) shall include the DMH Agreement Number, date of services performed and cost by major cost categories of salaries, wages, fringe benefits, supplies and expenses, participant support costs, travel, and indirect costs. Invoice(s) shall be signed by an authorized representative and submitted in triplicate not more frequently than monthly in arrears to:

Department of Mental Health  
Attn: DMH CONTRACT MANAGER  
1600 9<sup>th</sup> Street  
Sacramento, CA 95814

NOTE: All payments are made in arrears.

#### **2. Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall no longer be in full force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

#### **3. Budget**

Charges/rates shall be computed in accordance with the following budget on page 2 of Exhibit B. The cost of each major budget category may vary up to 15% within each Fiscal Year (FY) without DMH approval so long as the total amount budgeted for the FY is not exceeded.

#### **4. Prompt Payment Clause**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

## EXHIBIT C

### **GENERAL TERMS AND CONDITIONS**

PLEASE NOTE: This page will not be included with the final contract, The General Terms and Conditions will be included in the contract by reference to Internet site: <http://www.ols.dgs.ca.gov/Standard+Language/default.htm> - GTC 304 Dated 03/01/2004.

SAMPLE

## EXHIBIT D

### **SPECIAL TERMS AND CONDITIONS**

- A. **SUBCONTRACTS.** Except for subcontracts identified in the proposal in accordance with the Request for Proposal or Invitation for bid, Contractor shall submit any subcontracts which are proposed to be entered into in connection with this Contract to the State for its prior written approval before entering into the same. No work shall be subcontracted without the prior written approval of the State. Upon the termination of any subcontract, State shall be notified immediately. Any subcontract shall include all the terms and conditions of this Contract and its attachments, in addition to any other relevant terms and conditions.
- B. **PUBLICATIONS AND REPORTS.** If publications and reports are provided for in the Contract, Contractor shall:
1. Incorporate any comments or revisions required by the State into any publication or report and shall not publish any material until it receives final State approval.
  2. Furnish two copies of each publication and report required plus one reproducible original.
  3. Illustrations, maps and graphs in summaries and publications and reports shall be developed in a manner which allows the complete illustration to be contained on a single 8-1/2 by 11 page unless specific written approval is given to the contrary.
  4. Graphs, illustrations and printed materials shall be printed in a single color throughout each publication unless prior State approval is granted.
  5. Contractor's name shall appear only on the cover and title page of publications and reports and summaries. Covers and title pages will read as follows:  

**DEPARTMENT OF MENTAL HEALTH**  
**TITLE**  
**By (Contractor)**
  6. The State reserves the right to use and reproduce all publications, reports, and data produced and delivered pursuant to this Contract. DMH further reserves the right to authorize others to use or reproduce such materials, provided the author of the report is acknowledged in any such use or reproduction.
  7. If the publication and/or report is prepared by non-employees of the Department, it shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the report in a separate section of the report (Government Code Section 7550).
- C. **PROGRESS REPORTS.** If progress reports are required by the Contract, Contractor shall provide a progress report in writing, or orally if approved by the State Contract Manager, at least once a month to Contract Manager. This progress report shall include, but not be

limited to, a statement that the Contractor is or is not on schedule, any pertinent reports, or interim findings. Contractor shall cooperate with and be available to meet with State representatives to discuss any difficulties, or special problems, so that solutions or remedies can be developed as soon as possible.

- D. **PRESENTATION.** Upon request, Contractor shall meet with the State to present any findings, conclusions and recommendations required by the Contract for approval. If set forth in the Contract, Contractor shall submit a comprehensive final report for approval. Both the final meeting and the final report must be completed on or before the date indicated in the Contract.
- E. **FISCAL RECORDS.** Contractor shall furnish detailed itemization of and retain all records relating to direct expenses reimbursed and to hours of employment in performance of this Contract by any employee of Contractor for which the State is billed. In addition, Contractor shall establish accounting procedures subject to State approval--or the State shall approve existing procedures--and the Contractor shall maintain for at least three years books, papers, records, documents, and other evidence sufficient to determine the costs and hours spent fulfilling the terms of this Contract and related incidental tasks. Contractor shall allow State representatives to review any of these materials.
- F. **DEPARTMENT OF MENTAL HEALTH STAFF.** Department of Mental Health staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the Contract Manager. In this connection, Department of Mental Health staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- G. **CONFIDENTIALITY OF DATA AND DOCUMENTS.**
1. Contractor will not disclose data or documents or disseminate the contents of the final or any preliminary report without express permission of the Contract Manager.
  2. Permission to disclose information or documents on one occasion or at public hearings held by the Department of Mental Health relating to the same shall not authorize Contractor to further disclose such information or documents on any other occasion.
  3. Contractor will not comment publicly to the press or any other media regarding the data or documents generated, collected, or produced in connection with this contract, or the Department of Mental Health's actions on the same, except to the Department of Mental Health staff, Contractor's own personnel involved in the performance of this Contract, at a public hearing, or in response to questions from a legislative committee.
  4. If requested by State, Contractor shall require each of its employees or officers who will be involved in the performance of this Contract to agree to the above terms in a form to be approved by State and shall supply State with evidence thereof.
  5. Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure of the same.
  6. After any data or documents submitted has become a part of the public records of the State, Contractor may, if it wishes to do so, at its own expense and upon approval by the Contract Manager, publish or utilize the same but shall include the following legend:

## LEGAL NOTICE

This report was prepared as an account of work sponsored by the Department of Mental Health, but does not necessarily represent the views of the Department or any of its employees except to the extent, if any, that it has formally been approved by the Department. For information regarding any such action, communicate directly with the Department at P.O. Box 952050, Sacramento, California, 94252-2050. Neither said Department nor the State of California, nor any officer or employee thereof, or any of its contractors or subcontractors makes any warranty, express or implied, or assumes any legal liability whatsoever for the contents of this document. Nor does any party represent that use of the data contained herein would not infringe upon privately owned rights without obtaining permission or authorization from any party who has any rights in connection with the data.

### H. PROVISIONS RELATING TO DATA.

1. "Data" as used in this Contract means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or be used to define a design or process; or support a premise or conclusion asserted in any deliverable document called for by this Contract. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts, or may be retained in computer memory.
2. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Contract and which has been reasonably demonstrated as being of a proprietary force and effect at the time this Contract is commenced.
3. "Generated data" is that data which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at State expense, together with complete documentation thereof, shall be treated in the same manner as generated data.
4. "Deliverable data" is that data which under terms of this Contract is required to be delivered to the State. Such data shall be property of the State.
5. "Generated data" shall be the property of the State unless and only to the extent that it is specifically provided otherwise herein.
6. The title to Contractor's proprietary data shall remain in the Contractor's possession throughout the term of this Contract and thereafter. As to generated data which is reserved to the Contractor by express terms of this Contract and as to any preexisting or proprietary data which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced in evidence in a court of competent jurisdiction at Contractor's own expense for a period of not less than three years after receipt by the

State of the final report or termination of this Contract and any and all amendments hereto, or for three years after the conclusion or resolution of any and all audits or litigation relevant to this Contract, whichever is later.

7. Prior to the expiration of such time and before changing the form of or destroying any such data, Contractor shall notify State of any such contemplated action; and State may within 30 days after said notification determine whether it desires said data to be further preserved and, if State so elects, the expense of further preserving said data shall be paid for by the state. Contractor agrees that State shall have unrestricted reasonable access to the same during said three-year period and throughout the time during which said data is preserved in accordance with this Contract, and Contractor agrees to use best efforts to furnish competent witnesses or to identify such competent witnesses to testify in any court of law regarding said data.
- I. **APPROVAL OF PRODUCT.** Each product to be approved under this Contract shall be approved by the Contract Manager. The State's determination as to satisfactory work shall be final absent fraud, mistake or arbitrariness.
- J. **SUBSTITUTIONS.** Contractor's key personnel as indicated in its proposal may not be substituted without Contract Manager's prior written approval.
- K. **NOTICE.** Notice to either party may be given by first class mail properly addressed, postage fully prepaid, to the address beneath the name of each respective party. Such notice shall be effective when received as indicated by post office records or if deemed undeliverable by post office, such notice shall be effective nevertheless 15 days after mailing. Alternatively, notice may be given by personal delivery by any means whatsoever to the party, and such notice shall be deemed effective when delivered.
- L. **WAIVER.** No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of State to enforce at any time the provisions of this Contract, or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions not to affect the validity of this Contract or the right of State to enforce said provisions.
- M. **GRATUITIES AND CONTINGENCY FEES.** The State, by written notice to the Contractor, may terminate the right of Contractor to proceed under this Contract if it is found, after notice and hearing by the State, that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or performing of such contract, provided that the existence of the facts upon which the State makes such findings that shall be an issue may be reviewed in any competent court.

In the event this Contract is terminated as provided in the paragraph above, State shall be entitled (a) to pursue the same remedies against Contractor as it could pursue in the event of the breach of the Contract by the Contractor, and (b) as a predetermined amount of liquidated damages in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount which shall be not less than three times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**The Contractor warrants by execution of this Contract that no person or selling agency has been employed or retained to solicit or secure this Contract upon an Contract or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Contractor, for the purpose of securing business. For breach or violation of this warranty, the State shall have the right to annul this Contract without liability, paying only for the values of the work actually returned, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.**

- N. **INSURANCE.** Contractor hereby warrants that it carries and shall maintain in full force and effect during the full term of this contract and any extensions to said term:

Sufficient and adequate Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Contract and agrees to furnish to State satisfactory evidence thereof at any time the State may request the same; and

Sufficient and adequate Liability Insurance to cover any and all potential liabilities and agrees to furnish to State satisfactory evidence thereof upon request by State.

- O. **CONTRACT IS COMPLETE.** Other than as specified herein, no document or communication passing between the parties hereto shall be deemed a part of this Contract.
- P. **CAPTIONS.** The clause headings appearing in this Contract have been inserted for the purpose of convenience and ready reference. They do no purport to and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they pertain.
- Q. **PUBLIC HEARINGS.** If public hearings on the subject matter dealt with in this Contract are held within one year from the contract expiration date, Contractor will make available to testify the personnel assigned to this Contract at the hourly rates specified in the Contractor's proposed budget. State will reimburse Contractor for travel of said personnel at the contract rates for such testimony as may be requested by State.
- R. **EQUAL EMPLOYMENT OPPORTUNITY.** If this Contract provides for payment in excess of \$10,000 during the performance of this Contract, the Contractor agrees to comply with the provisions of Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations. (41 CFR Part 60)
- S. **DVBE.** Unless specifically waived by the Deputy Director of Administrative Services of the Department of Mental Health, Contractor shall comply with the Disabled Veteran Business Enterprises participation goal in accordance with the provisions of Public Contract Code Section 10115 et seq.
- T. **FORCE MAJEURE.** Neither the State nor the Contractor shall be deemed to be in default in the performance of the terms of this Contract if either party is prevented from performing

the terms of this Contract by causes beyond its control, including without being limited to: acts of God, interference, rulings or decision by municipal, Federal, State or other governmental agencies, boards or commissions; any laws and/or regulations of such municipal, State, Federal, or other governmental bodies; or any catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other parties written notice of the cause of delay,. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other parties written notice thereof and shall resume performance under this Contract.

- U. **PERMITS AND LICENSES.** The Contractor shall procure and keep in full force and effect during the term of this Contract all permits, registrations and licenses necessary to accomplish the work specified in this Contract, and give all notices necessary and incident to the lawful prosecution of the work.

The Contractor shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and comply with all prevailing Federal, State, and local laws, and rules and regulations made pursuant to said Federal, State, and local laws, which in any way affect the conduct of the work of this Contract. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then the Contractor shall immediately notify the State in writing.

- V. **LITIGATION.** The State, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the State or its officers or employees for which the contractor must provide indemnification under this Contract. The failure of the State to give such notice, information, authorization or assistance shall not relieve the Contractor of its indemnification obligations. The Contractor shall immediately notify the State of any claim or action against it which affects, or may affect, this Contract, the terms and conditions hereunder, or the State, and shall take such action with respect to said claim or action which is consistent with the terms of this Contract and the interest of the State.

- W. **SEVERABILITY.** If any provision of this Contract is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this Contract and remainder of this Contract shall remain in full force and effect. Therefore, the provisions of this Contract are and shall be deemed to be severable.

- X. **DISPUTES.** Contractor shall first discuss and attempt to resolve any dispute arising under or relating to the performance of this Contract, which is not disposed of by the Contract, informally with the DMH Contract Manager. If the dispute cannot be disposed of at this level, then the dispute shall be decided by the Department of Mental Health's Deputy Director of Administration. All issues pertaining to this dispute shall be submitted in written statements and addressed to the Deputy Director of Administration, Department of Mental Health, 1600 9th Street, Room 150, Sacramento, California 95814. Such written notice must contain the Contract Number. The decision of the Deputy Director of Administrative Services shall be final and binding to all parties. Within ten days of receipt of the written grievance report from the Contractor, the Deputy Director of Administration shall make a determination on the problem, and shall respond in writing to the Contractor indicating the decision. Pending the final decision by the Deputy Director of Administration or his/her designee, the Contractor shall proceed diligently with the performance of the Contract .

Neither the pendency of a dispute, nor its consideration by the Deputy Director of Administration, will excuse the Contractor from full and timely performance of the services required in accordance with the terms of the contract.

Notwithstanding any other provisions of this Contract, after recourse to the procedure set forth in the paragraph above, any controversy or claim arising out of or relating to this Contract or breach thereof shall be settled by arbitration at the election of either party in accordance with California Public Contract Code Section 10240 et. seq., and judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction thereof.

Y. PUBLIC CONTRACT CODE. Contractor is advised that provisions of Public Contract Code Sections 10355 through 10382 pertaining to the duties, obligations and rights of a consultant service contractor are applicable to this Contract.

Z. EVALUATION OF CONTRACTOR'S PERFORMANCE. The Contractor's performance under this Contract will be evaluated by the State after completion of the contract. A copy of the written evaluation will be maintained in the contract file and may be submitted to the Office of Legal Services, Department of General Services.

AA. TRAVEL. Contractor's headquarters for purposes of payment of travel shall be the city designated in the signature block unless otherwise specified in the contract.

For travel necessary to the performance of this Contract, contractor shall use and submit travel reimbursement forms provided by DMH. All reimbursements shall be made in accordance with, and shall not exceed the rates authorized by, the State Administrative Manual and the Policies and Procedures of the Department of Mental Health (DMH). All requests to exceed any base reimbursement rate established in the State Administrative Manual or the Policies and Procedures of DMH must be made and approved prior to the date of travel and must be submitted in writing to the State's Contract Manager.

BB. PRIORITY HIRING CONSIDERATIONS FOR CONTRACTS EXCEEDING \$200,000. If the resulting contract will have a total contract value of \$200,000 or more, the contractor is hereby advised that it will be obligated to give priority consideration in filling vacancies in positions funded by the resulting contract to qualified recipients of aid under Welfare and Institutions Code Section 11200. This requirement shall not interfere with or require a violation of a collective bargaining Contract, a federal affirmative action obligation for hiring disabled veterans of the Vietnam era, or nondiscrimination compliance laws of California and does not require the employment of unqualified recipients of aid.

CC. TERMINATION. Unless otherwise specified, either party may terminate this Contract by giving 30 days written notice to the other party. The notice of termination shall specify the effective date of termination.

Upon the Contractor's receipt of notice of termination from the State, and except as otherwise directed in the notice, the Contractor shall:

1. Stop work on the date specified in the notice.

2. Place no further orders or enter into any further subcontracts for materials, services or facilities except as necessary to complete work under the Contract up to effective date of termination.
3. Terminate all orders and subcontracts;
4. Promptly take all other reasonable and feasible steps to minimize any additional cost, loss, or expenditure associated with work terminated, including, but not limited to reasonable settlement of all outstanding liability and claims arising out of termination of orders and subcontracts;
5. Deliver or make available to DMH all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor under this Contract, whether completed, partially completed, or in progress.

In the event of termination, an equitable adjustment in the price provided for this Contract shall be made. Such adjustment shall include reasonable compensation for all services rendered, materials supplies, and expenses incurred pursuant to this Contract prior to the effective date of termination.

#### DD.CLIENT CONFIDENTIALITY.

1. For contract involving clients and information regarding clients, the Contractor shall protect from unauthorized disclosure, Individually Identifiable Personal Information (IIPI), which includes, but is not limited to; client name, social security number, birth date, and any other identifying information concerning persons receiving services pursuant to this contract, except for statistical information not identifying any client. Client is defined as "those persons receiving services pursuant to a Department of Mental Health funded program." Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this contract.
2. Contractor shall promptly transmit to the State all requests for disclosure of such identifying information not emanating from the client.
3. Contractor shall not disclose, except as otherwise specifically permitted by this contract or authorized by the client, any such identifying information to anyone other than the State without prior written authorization from the State.
4. For purposes of this section, identity shall include but not be limited to name, identifying number, symbol or other identifying piece of information assigned to the individual, such as a finger or voice print or a photograph which can be used to identify the individual person.
5. Notification of Electronic Breach. During the term of this Agreement, the contractor agrees to notify DMH immediately upon discovery of any breach of security of IIPI in computerized form if the IIPI was, or is reasonably believed to have been, acquired by an unauthorized person. Notification shall be made to the DMH Contract Manager within one business day. Written notice shall be provided to the DMH Contract Manager within two (2) business days of discovery. The Contractor shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. The Contractor

shall investigate such breach and provide a written report of the investigation to the DMH Contract Manager within thirty (30) working days of the discovery of the breach at the address below:

California Department of Mental Health  
Attention: (Contract Manager)  
1600 9th Street  
Sacramento, CA 95814

#### EE.CONFLICT OF INTEREST CERTIFICATION

In accordance with State laws and Departmental policy, no employees (including contractors) shall participate in incompatible activities which are in conflict with their job duties. In addition, State law requires employees whose positions are designated in the Department's Conflict of Interest Code to file statements of economic interest. Employees whose positions have been designated will be notified by the department if a statement is required.

In signing this contract, I certify that I have read and understand the following:

##### GOVERNMENT CODE 19990

A state officer or employee shall not engage in any employment, activity, or enterprise, which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.

Each appointing power shall determine, subject to approval of the department, those activities which, for employees under its jurisdiction, are inconsistent, incompatible or in conflict with their duties as state officers or employees. Activities and enterprises deemed to fall in these categories shall include, but not be limited to all of the following:

1. Using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another.
2. Using state time, facilities, equipment, or supplies for private gain or advantage.
3. Using, or having access to, confidential information available by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.
4. Receiving or accepting money or any other consideration from anyone other than the state for the performance of his or her duties as a state officer or employee.
5. Performance of an act in other than his or her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee.
6. Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the

appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee.

7. Subject to any other laws, rules, or regulations as pertain thereto, not devoting his or her full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee.

#### FF. Use of State Funds

Contractor shall not use funds received from DMH pursuant to this contract to pay for costs or expenses directly related to the following:

1. The lobbying of an official position by Contractor, as an organization, to support either the passage or defeat of any legislation, initiative or ballot measure; or,
2. The lobbying of an official position by Contractor, as an organization, to support either the election or defeat of any candidate for elective office.

This provision is not intended and shall not be construed to limit the expression of the views, opinions, or positions of any members of Contractor and individual, private citizens; nor does this provision limit Contractor from merely reporting the results of a poll or survey of its membership.

(Added by Stats. 1981, c230. Amended by Stats. 1986, c1344.)

**Rev. Mar-05**

## Exhibit E

### HIPAA BUSINESS ASSOCIATE PROVISIONS

#### 1. Recitals

- A. It has been determined that a business associate relationship exists between the Department of Mental Health (DMH) and the contractor under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- B. DMH may wish to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI").
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. Under this Agreement, Contractor is the Business Associate of DMH and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DMH and uses or discloses PHI.
- E. DMH and Business Associate desire to protect the privacy and provide for the security of PHI disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- F. The purpose of these Provisions is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- G. The terms used in these Provisions, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

#### Permitted Uses and Disclosures of PHI by Business Associate

- A. *Permitted Uses and Disclosures.* Except as otherwise indicated in these Provisions, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DMH, provided that such use or disclosure would not violate the HIPAA regulations, if done by DMH.
- B. *Specific Use and Disclosure Provisions.* Except as otherwise indicated in these Provisions, Business Associate may:

- (1) *Use and disclose for management and administration.* Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
- (2) *Provision of Data Aggregation Services.* Use PHI to provide data aggregation services to DMH. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DMH with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of DMH.

#### Responsibilities of Business Associate

Business Associate agrees:

- A. *Nondisclosure.* Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. *Safeguards.* To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information, including electronic PHI, that it creates, receives, maintains or transmits on behalf of DMH; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities. Business Associate will provide DMH with information concerning such safeguards as DMH may reasonably request from time to time.
- C. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of these Provisions.
- D. *Reporting of Improper Disclosures.* To report to the DMH Privacy Officer within one business day, (916) 654-0497, of discovery by Business Associate that PHI has been used or disclosed other than as provided for by this Agreement and these Provisions.
- E. *Notification of Electronic Breach.* During the term of this Agreement, to notify DMH immediately upon discovery of any breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person. Notification shall be made to the DMH Privacy Officer within one business day at (916) 654-0497. Written notice shall be provided to the DMH Privacy Officer within two (2) business days of discovery. Business Associate shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Business Associate shall investigate such breach and provide a written report of the investigation to the DMH

Privacy Officer within thirty (30) working days of the discovery of the breach at the address below:

Privacy Officer  
C/o Office of HIPAA Compliance  
California Department of Mental Health  
1600 9<sup>th</sup> Street, Room 150  
Sacramento, CA 95814

- F. *Business Associate's Contractors.* To ensure that any contractors, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of DMH, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI; and to incorporate, when applicable, the relevant provisions of these Provisions into each subcontract or sub-award to such agents or subcontractors.
- G. *Availability of Information to DMH and Individuals.* To provide access as DMH may require, and in the time and manner designated by DMH (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DMH (or, as directed by DMH), in accordance with Health & Safety Code 123110 and 45 CFR Section 164.524. Designated Record Set means the group of records maintained for DMH that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DMH health plans; or those records used to make decisions about individuals on behalf of DMH. Business Associate shall use the forms and processes developed by DMH for this purpose and shall respond to requests for access to records transmitted by DMH within 5 days of receipt of the request by producing the records or verifying that there are none within 15 days.
- H. *Amendment of PHI.* To make any amendment(s) to PHI that DMH directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by DMH.
- I. *Internal Practices.* To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DMH, or created or received by Business Associate on behalf of DMH, available to DMH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DMH or by the Secretary, for purposes of determining DMH's compliance with the HIPAA regulations.
- J. *Documentation of Disclosures.* To document and make available to DMH or (at the direction of DMH) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- K. *Employee Training and Discipline.* To train and use reasonable measures to ensure compliance with the requirements of these Provisions by employees who assist in the performance of functions or activities on behalf of DMH under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of these Provisions, including termination of employment.

### Obligations of DMH

DMH agrees to:

- A. *Notice of Privacy Practices.* Provide Business Associate with the Notice of Privacy Practices that DMH produces in accordance with 45 CFR 164.520, as well as any changes to such notice. The most current Notice of Privacy Practices can be viewed at: <http://www.DMH.ca.gov/hipaa>.
- B. *Permission by Individuals for Use and Disclosure of PHI.* Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. *Notification of Restrictions.* Notify the Business Associate of any restriction to the use or disclosure of PHI that DMH has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

### Audits, Inspection and Enforcement

From time to time, DMH may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and these Provisions. Business Associate shall promptly remedy any violation of any provision of these Provisions and shall certify the same to the DMH Privacy Officer in writing. The fact that DMH inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Agreement and these Provisions, nor does DMH's:

- (a) failure to detect; or
  - (b) detection, but failure to notify Business Associate, or
  - (c) require Business Associate's remediation of any unsatisfactory practices,
- constitute acceptance of such practice or a waiver of DMH's enforcement rights under this Agreement and these Provisions.

### Termination

- A. *Termination for Cause.* Upon DMH's knowledge of a material breach of these Provisions by Business Associate, DMH shall either:
  - (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DMH; or
  - (2) Immediately terminate this Agreement if Business Associate has breached a material term of these Provisions and cure is not possible.
  - (3) If neither cure nor termination is feasible, the DMH Privacy Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

- B. *Judicial or Administrative Proceedings.* DMH may terminate this Agreement, effective immediately, if (i) Business Associate is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation that the Business Associate has violated a privacy or security standard or requirement of HIPAA, or (iii) other security or privacy laws is made in an administrative or civil proceeding in which the Business Associate is a party.
- C. *Effect of Termination.* Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DMH (or created or received by Business Associate on behalf of DMH) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, it shall continue to extend the protections of these Provisions to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

#### Miscellaneous Provisions

- A. *Disclaimer.* DMH makes no warranty or representation that compliance by Business Associate with these Provisions, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Amendment.* The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of these Provisions may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DMH's request, Business Associate agrees to promptly enter into negotiations with DMH concerning an amendment to these Provisions embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. DMH may terminate this Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend these Provisions when requested by DMH pursuant to this Section or (ii) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DMH in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. *No Third-Party Beneficiaries.* Nothing express or implied in the terms and conditions of these Provisions is intended to confer, nor shall anything herein confer, upon any person other than DMH or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- D. *Interpretation.* The terms and conditions in these Provisions shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of

these Provisions shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

- E. *Regulatory References.* A reference in the terms and conditions of these Provisions to a section in the HIPAA regulations means the section as in effect or as amended.
- F. *Survival.* The respective rights and obligations of Business Associate under Section 6.C of these Provisions shall survive the termination or expiration of this Agreement.
- G. *No Waiver of Obligations.* No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Addendum 2: Contractor Certification Clauses (CCC-304-A)

**CCC-304**

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

**CONTRACTOR CERTIFICATION CLAUSES**

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

4. UNION ORGANIZING: Contractor hereby certifies that no request for reimbursement, or payment under this agreement, will seek reimbursement for costs incurred to assist, promote or deter union organizing.

5. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

6. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

7. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured

labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

8. **DOMESTIC PARTNERS:** Commencing on July 1, 2004 Contractor certifies that it is in compliance with Public Contract Code section 10295.3 with regard to benefits for domestic partners. For any contracts executed or amended, bid packages advertised or made available, or sealed bids received on or after July 1 2004 and prior to January 1, 2007, a contractor may require an employee to pay the costs of providing additional benefits that are offered to comply with PCC 10295.3.

## **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. **CONFLICT OF INTEREST:** Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

### **Current State Employees (PCC 10410):**

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

### **Former State Employees (PCC 10411):**

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

**2. LABOR CODE/WORKERS' COMPENSATION:** Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

**3. AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

**4. CONTRACTOR NAME CHANGE:** An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

**5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:**

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

**6. RESOLUTION:** A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity. *[Proposers: Please contact DMH if you would like to see a copy of this form.]*

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SAMPLE